APPENDIX "F"

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

CIVIL ACTION No. 73W-48(N)

UNITED STATES OF AMERICA, *Plaintiff*

v.

THE BOARD OF SUPERVISORS OF WARREN COUNTY, MISSISSIPPI, et al., *Defendants*

Findings of Fact, Conclusions of Law and Mandatory Injunction Directing Election

Filed May 13, 1976

A hearing was held in the above-named matter on April 29, 1976. After consideration of the evidence presented at that hearing, the arguments of counsel and the submitted briefs, the court adopts the apportionment plan submitted by the Warren County Board of Supervisors and directs that a new election process to fill the offices affected should be promptly held.

I. Apportionment

At the outset of this hearing the court was presented with three apportionment plans: two by the Government and one by the Warren County Board of Supervisors. The court did not consider itself bound to choose between these three plans but proceeded on the premise that if Fourteenth and Fifteenth Amendment protections had not been accorded by any plan proposed, the court could have instituted its own plan or modified any of the three plans submitted. The court did, however, conclude from the face of

the plans that only Plan 2 submitted by the Government should be considered.[1]

The plan submitted by Warren County Board of Supervisors was drawn taking into consideration *only* five elements: (1) road mileage, (2) population, (3) land area, (4) existing voting precincts, and (5) 1970 U.S. census enumeration district boundaries within the city. The Board of Supervisors' expert witness testified that the racial makeup of the city and the county was not considered during the drafting of the original Board of Supervisors' plan. On the other hand, this same expert testified that Plan 2 submitted by the Government appeared to have been constructed so as to maximize black voting strength in at least one of the five districts. On cross examination, the witness admitted he had no knowledge of the Government's actual intent in fixing the configuration of the districts, but was relying solely upon the placement of district boundary lines and his analysis of the racial effect of such placement.

The Government assailed the Board of Supervisors' plan on three grounds: (A) it is deficient in the one-man, one-vote concept; (B) it has diluted black voting strength; and (C) there should be no substantial consideration given to the equalization of road mileage. The court considered all three attacks before deciding to accept this plan.

A. One-Man, One-Vote

Chapman v. Meier, 95 S.Ct. 751 (1975), requires that court-ordered apportionment plans not allow a significant

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[1] At the court's direction, the Government's Plan 1 was not the subject of any evidence taken during this hearing. This plan drew two districts entirely within the city limits of Vicksburg. Because of the substantial county responsibilities of the Board of Supervisors, the court determined that the parties should concentrate their proof on Government Plan 2 and the Board of Supervisors' plan, in both of which all proposed districts embraced urban and rural areas. Neither party objected to this procedure.

variation from the ideal population size of each district. The overall variation in predicted voting age population in the Board of Supervisors' plan is ± 7.3%. Although this is a larger variation than is included in either of the Government plans, it is in the order of only 200 to 300 predicted potential voters in the district with the largest variance. The court concludes that this is not significant enough to require the modification of this plan. All three plans are drawn with census figures now 6 years old. Although this appears to be the best information available, the estimated voting age population projection could contain numerical errors of a substantial order. In addition, this minor variation in projected voters derives some justification from the attempt of this plan to balance other considerations including road mileage and total area.

B. Dilution

The Government argues that *Beer v. United States,* 44 U.S.L.W. 4435 (U.C. March 30, 1976), would condemn as retrogressive the adoption of a plan that reduces the number of districts containing black voting age majorities. The Government points out that the invalid apportionment plan now in effect in Warren County includes three districts with majority black population—two of which contain black voting age population majorities of 60.2% and 50.5%.[2] The plan suggested by the Warren County Board of Supervisors provides for only one district with a majority black voting age population. The Government claims the adoption of this plan would be *per se* retrogressive and, therefore, its adoption is proscribed by *Beer. Beer,* however, is distinguishable. It involves § 5 of the Voting Rights Act and relies on the language of that statute for its holding.

More significantly, the court does not consider the plan it adopts to violate the spirit of *Beer.* Obviously the dis-

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[2] Five tenth of one percent in this district equates with less than 25 people.

tricts as now laid out must be reapportioned to meet one-man, one-vote requirements. Such reapportionment plans, however, cannot include districts which have been gerrymandered either to maximize or to minimize the racial composition of a particular district. Gilbert v. Sterret, 509 F.2d 1389, 1394 (5th Cir. 1975); Turner v. McKeithen, 490 F.2d 191, 197 (5th Cir. 1973). In redistricting to equalize numbers of voters, other considerations, such as equalization of road mileage and area, were appropriately integrated in producing the district lines as drawn. The results are not significantly dilutive of black voting strength. Under the plan adopted, blacks in Warren County will have a 60% total population majority in one of the five districts and a population minority of over 40% in two others. The majority district will have a majority black voting age population and in the other two districts the black voting age population will approximately 40%. The Board's plan originally was drawn without regard to race. In future general elections where there might be three candidates (Democrat, Republican, Independent), blacks would have a realistic opportunity of electing representatives from three districts with their plurality strength. The court determines this plan to be fair for both Fourteenth and Fifteenth Amendment purposes. It will not lessen the opportunity of black citizens of Warren County to participate in the political process and elect officials of their choice.

C. Equalization of Road Mileage

We reject the Government's argument that road mileage equalization should be a *de minimis* consideration in the drawing of this reapportionment plan. *Howard v. Adams County Board of Supervisors*, 453 F.2d 455 (5th Cir. 1972), recognized the equalization of road mileage as a legitimate consideration.

The Government argues, however, that since road mileage has not been equalized in Warren County for approximately the past 50 years, it should not now be a legitimate consideration. If this intends to urge that the errors of past officials in failing to seek equalization bind the present citizens by waiver or estoppel, it is not well taken. Any court apportionment plan should take into consideration every factor which will make county government in Warren County operate efficiently. The equalization of road mileage will substantially contribute to that efficiency since one of the major duties of the Board of Supervisors is to care for county roads.

SUMMARY

It is the opinion of this court that the plan submitted by the Warren County Board of Supervisors neither dilutes black voting strength nor is deficient in one-man, one-vote considerations. The plan will provide the most efficient operation of the county government in Warren County. For these reasons, this court adopts the apportionment plan submitted by the Warren County Board of Supervisors.

II. Election

The existing members of the Board of Supervisors, justices of the peace, and constables of Warren County are holdovers. It is imperative that the right of the people of Warren County to elect officials of their choice not be further delayed. The time and expense involved in conducting an election under the processes provided for by Mississippi law prohibit reliance on all of those procedures. To this end, we order that elections be held according to the following process and schedule:

Upon this order becoming final, the election commission shall direct the Circuit Clerk to conform the poll books to the new district lines within 3 weeks. *See* Miss. Code Ann. § 23-5-11 (1972). After the poll books have been corrected,

the Election Commission shall publish in a newspaper of general circulation in Warren County, for 3 consecutive weeks, notice of the upcoming election and the newly drawn districts. *See id.* § 19-3-1. This same notice shall be posted for the same period of time on the public bulletin board maintained at the Warren County courthouse. Upon completion of the period of publication and posting, which shall occur 21 days from the date of first publication and posting, candidates shall have 30 days in which to file qualifying petitions and affidavits and pay appropriate assessments as hereinafter particularized. *Cf. id.* § 23-5-19. Petitions shall include 50 signatures of registered electors residing in the candidate's district and shall be filed with the Circuit Clerk. *Cf. id.* § 23-5-3. Although Mississippi law only applies to 50-signature petition requirement to Election Commission candidates the court considers that, absent a party primary, the requirement of these petitioning signatures is appropriate for all offices involved. The Corrupt Practices Act affidavit required by state law shall also be filed within this 30-day period with the Circuit Clerk. *See id.* § 23-3-3 through -7. The assessments provided for in Miss. Code Ann. § 23-1-33(d) and (e) shall be paid by each candidate for any office covered hereby to the County Election Commission within the same 30 days. *See id.* § 23-1-35. Upon the expiration of this 30-day period, the Circuit Clerk shall turn over the petitions and affidavits to the Election Commission. Within 10 days of the receipt of these items, the Election Commission shall verify each petition, affidavit, the filing of the required fee, and the statutory qualifications of each candidate for the office petitioned for, and certify the list of qualified candidates. *See id.* § 23-5-197.

The election shall be held as soon thereafter as procedures required will reasonably permit. Ballots will be printed and distributed and the election conducted in accordance with all provisions of Mississippi law not inconsistent with this order. *See id.* § 23-5-99 through -169. If no candidate receives a majority of votes in that election, the names of the two candidates having the highest number of votes shall be resubmitted to the voters in a runoff balloting 2 weeks after the first balloting. *Id.* § 23-5-303. All candidates receiving a majority of votes shall be declared elected.

The term of office covered by this procedure shall begin 30 days after the runoff election and shall extend until the next regularly elected officials take office. This is a one-time procedure only. Subsequent regular elections in these districts will be conducted in accordance with Mississippi law. Any of the time periods discussed herein may be extended up to a maximum of 3 weeks to enable the special election or runoff to coincide with any regularly scheduled county-wide election.

This the 13 day of May 1976.

/s/ CHARLES CLARK
United States Circuit Judge

/s/ D. WM. MCPRESSELY, JR.
United States District Judge

/s/ WALTER S. NIXON, JR.
United States District Judge

APPENDIX G

APPENDIX "G"

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CIVIL ACTION No. 78-0392

CLYDE R. DONNELL, et al., *Plaintiffs,*

v.

UNITED STATES OF AMERICA, and
GRIFFIN BELL, Attorney General, *Defendants,*

and

EDDIE THOMAS, SR., et al., *Defendant-Intervenors*

Notice of Appeal to the Supreme Court of the United States

Notice is hereby given that Plaintiffs, Clyde R. Donnell, et al., hereby appeal to the Supreme Court of the United States from the final order entered on July 31, 1979, denying Plaintiffs' Motion for Declaratory Relief.

This appeal is taken pursuant to 42 U.S.C. 1973b and 42 U.S.C. 1973c.

/s/ GREER S. GOLDMAN
John W. Prewitt
George C. Cochran
Greer S. Goldman
Counsel for Plaintiffs

[Certificate of Service deleted in printing]

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